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MAY 25 1997

May 23, 1997

Hand Delivered

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

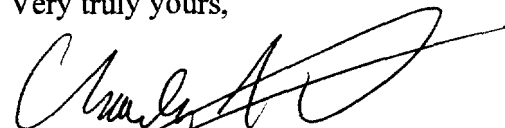
Re: MM Docket No. 97-122; File Nos. BRFT-970129YC, BRFT-970129YD

Dear Mr. Caton:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and four copies of his  
Opposition to Motion to Enlarge Issues.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles K. Naftalin

Enclosures

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DOCKET FILE COPY ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re )  
GERARD A. TURRO ) MM Docket No. 97-122  
For Renewal of Licence ) File Nos. BRFT-970129YC  
For FM Translator Stations ) BRFT-970129YD  
W276AQ(FM), Fort Lee, NJ, and )  
W232AL(FM), Pomona, NY )  
MONTICELLO MOUNTAINTOP )  
BROADCASTING, INC. )  
Order to Show Cause Why the )  
Construction Permit for FM Radio )  
Station WJUX(FM), Monticello, NY, )  
Should Not Be Revoked )

To: Honorable Arthur I. Steinberg  
Administrative Law Judge

**OPPOSITION TO MOTION TO ENLARGE ISSUES**

Gerard A. Turro, by his attorneys, hereby submits his Opposition to the Motion to Enlarge Issues ("Motion") which was filed May 8, 1997 by Universal Broadcasting of New York, Inc. ("Universal") in the above-captioned proceeding.

Universal requests that issues be specified against Mr. Turro based upon allegations that he violated Sections 1.1208 and 1.1210 of the Commission's ex parte Rules "by soliciting a third party to call and/or write the Commission" on his behalf to discuss the merits of his renewal applications in this proceeding. (Motion, p. 1) As demonstrated below, Universal's Motion must be denied as unsupported.

On the strength of apparent rumor, a newspaper article and the partial transcript of a live

radio call-in show, Universal contends that Mr. Turro “solicited” United States Senator Robert G. Torricelli and United States Congressman Steve Rothman to make ex parte communications to the Commission in this proceeding. The facts, which are established in Mr. Turro’s Declaration (which is Attachment A hereto) and a letter from the Senator (which is Attachment B hereto), entirely refute Universal’s allegations and require that its Motion be dismissed, as follows.

Mr. Turro never asked Senator Torricelli or Congressman Rothman (or anyone else) to contact the FCC on his behalf to discuss the merits of his position in this proceeding:

I have never communicated with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122.

I have never asked, or in any other way solicited, any other person or organization to communicate, orally or in writing, with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122.

More specifically, I have never asked, or in any other way solicited, Senator Robert G. Torricelli and/or Congressman Steven Rothman, or any members of their staffs, to communicate, orally or in writing, with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122. (Attachment A)

The Senator now has confirmed to the Commission’s Chairman the substance of what Mr. Turro sets forth in his Declaration:

As a result, I wrote a letter to the FCC along with Rep. Steve Rothman requesting that the FCC allow a plan to proceed that would bring Jukebox into full compliance with FCC rules. I should note that no one at Jukebox or any other party requested that I send this letter to the FCC. I took this action purely for the benefit of my constituents. (Attachment B)

To the extent that either the Senator or the Congressman have communicated with the Commission concerning this proceeding, the Attachments hereto demonstrate conclusively that they did so without solicitation by Mr. Turro and only to advance the interests of their constituents in continuing to receive the benefits of Jukebox Radio, the service retransmitted by

the two FM translators at issue in this proceeding.

With respect to the broadcast on April 28, 1997, Mr. Turro was contacted by the Senator's staff requesting approximately fifteen minutes of time to address the public and answer live call-in questions concerning the situation of Jukebox Radio. Mr. Turro made that time available. The broadcast was live, unrehearsed and without any prior understanding between Mr. Turro and the Senator and Congressman (or the other guest) as to its substance. (Attachment A)<sup>1</sup>

In addition, any written or oral communications directed to the Commission from either the Senator or the Congressman, alluded to in the Motion, were unsolicited by Mr. Turro and without any prior understanding on the part of Mr. Turro. (See Attachment A) This is the case concerning the letter of April 28, 1997 which is attached to the Supplement to Motion to Enlarge filed by Universal on May 19, 1997 ("Supplement").

On his own behalf, Mr. Turro has made no prohibited ex parte communications to the Commission in this proceeding. (Attachment A)

The facts as established in this Opposition, and the attachments hereto, conclusively establish that Mr. Turro has not violated Section 1.1208 of the Commission's Rules, which prohibits ex parte communications in the instant proceeding, or violated Section 1.1210 of the Commission's Rules, which prohibits the solicitation of such ex parte communications.<sup>2</sup> Neither

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<sup>1</sup>Clearly, the broadcast itself was not an "ex parte" presentation under the Commission's Rules because it was not "to and from Commission decision-making personnel" pursuant to Sections 1.1200, et seq., of the Commission's Rules.

<sup>2</sup>We note that by letter dated May 12, 1997, the Commission's Secretary served copies of a letter sent to the Commission by Senator Daniel Patrick Moynihan at the request of Howard Warshaw of Universal, which included lengthy attachments apparently forwarded to Senator Moynihan by Mr. Warshaw. Mr. Turro is a small businessman whose resources currently are stretched to the breaking point to defend himself in this proceeding. We find it unfortunate that

the Motion or the Supplement offer any factual support for Universal's allegations, as clearly indicated in the Mass Media Bureau's Opposition to Motion to Enlarge Issues filed May 19, 1997.

Therefore, the Motion to Enlarge Issues should be denied.

Respectfully submitted,

GERARD A. TURRO

By: *Alan Y. Naftalin (G, C.R.N.)*  
 /s/ Alan Y. Naftalin

By: *Charles R. Naftalin*  
 /s/ Charles R. Naftalin

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May 23, 1997

His Attorneys

---

Universal apparently has employed tactics which its Motion urges are a violation of the Commission's Rules.

Gerard A. Turro  
MM Docket No. 97-122

ATTACHMENT A

## **DECLARATION OF GERARD A. TURRO**

Gerard A. Turro declares as follows.

I have read the "Motion to Enlarge Issues" ("Motion") which was filed on May 8, 1997, by Universal Broadcasting of New York, Inc. ("Universal") before the Federal Communications Commission ("FCC") in MM Docket No. 97-122.

I have never communicated with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122.

I have never asked, or in any other way solicited, any other person or organization to communicate, orally or in writing, with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122.

More specifically, I have never asked, or in any other way solicited, Senator Robert G. Torricelli and/or Congressman Steven Rothman, or any members of their staffs, to communicate, orally or in writing, with any member of the FCC or its staff concerning the merits of my applications for renewal of license, or any other matters, before the FCC in MM Docket No. 97-122.

With respect to the April 28, 1997 broadcast referred to in Universal's Motion, a member of Senator Torricelli's staff requested approximately fifteen minutes of air time in which to address the public and answer callers' questions concerning the situation of Jukebox Radio before the FCC. That broadcast was live and unrehearsed with me. I had no prior understanding

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with anyone, including the guests who appeared in that broadcast, as to the substance of that broadcast.

I declare under penalty of perjury that the foregoing is true and correct.

By: \_\_\_\_\_

Gerard A. Turro

Executed the 19 Day of May, 1997



Gerard A. Turro  
MM Docket No. 97-122

ATTACHMENT B

## United States Senate

WASHINGTON, DC 20510-3003

May 23, 1997

Mr. Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Chairman Hundt:

I continue to remain concerned about the situation regarding Jukebox radio and the potential threats to its broadcast service as the administrative court process begins.

Jukebox is an invaluable asset to Bergen County residents, beloved by individuals across almost every demographic with special appeal to diverse ethnic and elderly communities. Its unique programming is sometimes the only form of information and entertainment these individuals receive. Indeed, as the only FM radio service providing news and emergency information to Bergen County, it is vital to the community.

A bi-partisan coalition from New Jersey and I have been involved in the dispute about Jukebox for several years because if Jukebox's broadcasting rights were terminated, FM radio for Bergen County would cease to exist. We are fighting on behalf of our constituents for the survival of FM radio in Bergen County. Jukebox Radio provides unique informational and entertainment programming including emergency notification to County residents.

In response to news reports in late April that Jukebox's service was in serious jeopardy, my staff initiated contact with the station's management to inquire about the conditions leading to this situation. I also reached out to several elected officials including Rep. Steve Rothman.

As a result, I wrote a letter to the FCC along with Rep. Rothman requesting that the FCC allow a plan to proceed that would bring Jukebox into full compliance with FCC rules. I should note that no one at Jukebox or any other party requested that I send this letter to the FCC. I took this action purely for the benefit of my constituents.

Indeed, the special circumstances regarding this case has prompted me to begin drafting legislation, which will be ready for introduction in the very near future, to ensure the survival of radio stations such as Jukebox that provide informational and entertainment programming to otherwise underserved counties. Similar legislation was passed to ensure the survival of similar radio stations in other areas.

Chairman Hundt  
Page Two

Nonetheless, I am hopeful that you will work with Jukebox Radio to bring to fruition a plan that would bring Jukebox into full compliance with FCC rules. It is critical that FM radio survive in Bergen County and I look forward to working with you in achieving this goal.

Thank you again for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robt. Torricelli", with a stylized flourish at the end.

ROBERT TORRICELLI  
United States Senator

cc (by mail): The Honorable Arthur I. Steinberg  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW Room 228  
Washington, DC 20554

Alan Aronowitz, Esq.  
Hearing Branch  
Enforcement Division  
Federal Communications Commission  
2025 M Street, NW, Room 7212  
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Chairman Hundt  
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1150 Connecticut Avenue, NW  
Washington, DC 20036

## CERTIFICATE OF SERVICE

I, Barbara Frank, a secretary in the law offices of Koteen & Naftalin, L.L.P., hereby certify that true copies of the foregoing "OPPOSITION TO MOTION TO ENLARGE ISSUES" have been served upon the following by first-class United States mail, postage prepaid, this 23rd day of May 1997:

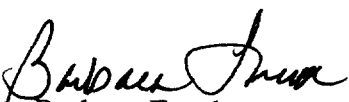
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Federal Communications Commission  
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/s/ Barbara Frank  
Barbara Frank